

BAY CO. ELECTION COMMISSION

JANUARY 31, 1997

THE BAY COUNTY ELECTION COMMISSION MET ON FRIDAY, JANUARY 31, 1997 IN THE COMMISSIONERS' GROUND FLOOR CONFERENCE ROOM OF THE BAY COUNTY BUILDING. THE PURPOSE OF THIS SESSION WAS TO CONSIDER CLARITY OF PETITIONS FILED FOR THE RECALL OF FOUR (4) BANGOR TOWNSHIP SCHOOL BOARD TRUSTEES. THE MEETING WAS CALLED TO ORDER AT 8:05 A.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT:

ROLL CALL: KAREN TIGHE, PROBATE JUDGE
JEANETTE NEITZEL, TREASURER
BARBARA ALBERTSON, CLERK

ALSO PRESENT: CYNTHIA A. LUCZAK, SECRETARY
JOHN SHARP, BANGOR TRUSTEE
LINDA CAPRATHE, BANGOR TRUSTEE
KENT HUBER, BANGOR TRUSTEE
GEORGE PHILLIPS, ATTORNEY
CHUCK HEWITT, ATTORNEY
DARLENE SNIDER, TAXPAYER
BEV THEISEN, CITIZENS GROUP
BUZZ ROGGENBUCK, CITIZEN GROUP
SUE ROGGENBUCK, CITIZEN GROUP
HENRY SCHUMANN, TAXPAYER
BARB BIBBEE, TAXPAYER
KATHY WALSH, TAXPAYER

JUDGE TIGHE ANNOUNCED THE MEETING HAD BEEN CALLED FOR THE CLARITY OF RECALL LANGUAGE IN THE CASE OF BANGOR TOWNSHIP TRUSTEES, JOHN SHARP, LINDA CAPRATHE, RICHARD KOWALSKI AND WILLIAM JORDAN.

AN INTRODUCTION OF GUESTS WAS HELD FOR THE RECORD.

C. HEWITT: ATTORNEY CHUCK HEWITT SPOKE ON BEHALF OF THE CITIZENS GROUP WHO IMPLEMENTED THE RECALL PETITIONS. THE ATTORNEY SAID THE RECALL TO BE CONSIDERED TODAY, HAD BEEN PREPARED FROM PRIOR RECALL CLARITY COMMENTS AND THE REVIEW OF ADDITIONAL

- C. HEWITT: APPROVED LANGUAGE AT THE JUDICIAL LEVEL. HE REFERRED TO FORMER COURT PROCEEDINGS OF A SCHOOL SUPERINTENDENT, MEYER VS. PACH-KOWKSI. MR. HEWITT FELT THE PETITIONS WERE CLEAR AND SHOULD BE PRESENTED TO THE VOTERS.
- G. PHILLIPS: ATTORNEY PHILLIPS REQUESTED A COPY OF THE PROCEEDINGS CITED BY MR. HEWITT AND WAS THEN AFFORDED A COPY FOR REVIEW.
- B. ALBERTSON: CLERK ALBERTSON REFERRED TO A MEMO FROM THE SECRETARY OF STATE OFFICE (1993) WHICH RELATED TO THE WORDING OF A RECALL PETITION IF THERE WAS MORE THAN ONE REASON FOR A RECALL AT ONE TIME, IF ONE PORTION OF IT WAS CLEAR, THEN SHOULD BE APPROVED BY THE BOARD. THE CLERK READ MCLA 168.952 (3) FOR THE RECORD.
- K. TIGHE: TO SUMMARIZE, JUDGE TIGHE STATED "IF ANY ONE OF THE REASONS FOR THE PROPOSED RECALL WAS VALID, THEN THE WHOLE PETITION HAD TO BE VALIDATED AND SHE BELIEVED THAT WAS CHANGED". A PETITION WAS TO BE AMENDED TO BE ACCEPTABLE IN ITS ENTIRETY. IF THE BOARD APPROVED TWO (2) OUT OF THE THREE (3) POINTS FOR RECALL, THE THIRD CONTENTION MUST BE AMENDED AND APPROVED BEFORE SUBMISSION TO THE ELECTORATE.
- C. HEWITT: MR. HEWITT REITERATED THE PETITIONS WERE CLEAR BUT REALIZED THERE WERE RULES OF CLARITY CONSTRUCTION/INTERPRETATION AND WONDERED THE LEGAL EFFECT OF THE SECRETARY OF STATE'S MEMO IN THIS CASE.
- K. TIGHE: JUDGE TIGHE POINTED OUT THAT THE STATUTE HAD BEEN AMENDED WHICH CHANGED THE INTERPRETATION. THE ORIGINAL STATUTE READ "MUST DETERMINE THE REASONS FOR THE RECALL ARE OF SUFFICIENT CLARITY" AND WAS LATER AMENDED TO PROVIDE THAT THEY MUST "MEET EACH REASON" FOR THE RECALL.

G. PHILLIPS

ATTORNEY PHILLIPS ADDRESSED THE BOARD WITH FOUR (4) MAJOR AREAS OF HIS CONCERN. FIRST, "THE ATMOSPHERE OF MISTRUST" THAT WAS UNCLEAR IN MR. PHILLIPS' OPINION. THIS IMPLIED THE WHOLE ELECTORATE WAS A PART OF THIS MISTRUST AND NOT JUST A MAJORITY. ONLY CERTAIN MEMBERS OF THE ELECTORATE SHOULD BE ADDRESSED. ALSO, THE FAILURE TO EVALUATE/EXTEND THE SUPERINTENDENTS CONTRACT, SEEMED AS THOUGH THE BOARD WAS OBLIGATED TO EXTEND THE CONTACT AND THERE WAS NO POLICY TO SUPPORT THIS OR THE "TIMELY EVALUATION" ARGUMENT. A "FAILURE TO EXTEND" CONTRACTS WAS NOT APPLICABLE IN THE CASE OF WILLIAM JORDAN SINCE HE WAS REAPPOINTED 7/1/97 AND COULD NOT BE RECALLED OUTSIDE HIS TERM. SECONDLY, "THE FAILURE TO ATTEND POSTED MEETINGS AND SESSIONS" WAS UNCLEAR AS IT IMPLIED THE BOARD MEMBER FAILED TO ATTEND ALL MEETINGS AND SHOULD BE MORE SPECIFIC. WAS THIS 2% OF MEETINGS OR ONE OUT OF 50 MEETINGS OR WHAT? IN THE CASE OF MR. JORDAN, HE HAD INFORMED THE ATTORNEY HE HAD ONLY MISSED ONE OR TWO MEETINGS AT THE MOST. THE THIRD ISSUE WAS MRS. CAPRATHE AND "HOLDING INCOMPATIBLE OFFICES AS AN EMPLOYEE OF THE DISTRICT FOR SCHOOL BOARD TRUSTEE FOR 18 MONTHS". MR. PHILLIPS RESPONDED THAT MS. CAPRATHE DID NOT HOLD ANY OTHER OFFICE BESIDE A SCHOOL BOARD OFFICE DURING THIS TIME. PETITIONERS MAY BE REFERRING TO A "WORK FIRST" PROGRAM BUT THE PETITION WAS NOT CLEAR. LASTLY, THE PETITION OF JOHN SHARP ALLEGED "HE RECEIVED EXCESSIVE COMPENSATION IN VIOLATION OF MCLA 380.116". THIS STATUTE HAD BEEN REPEALED SO THE VIOLATION CLAIMED MAY NOT BE UPHOLD.

C. HEWITT:

ATTORNEY HEWITT EXPLAINED THE ELECTION COMMISSION WAS NOT A FACT FINDING PANEL, AND THAT INFORMATION PRESENTED BY MR. PHILLIPS REFERRED TO THE FACTUAL CONTENT OF THE ALLEGATIONS. THE ELECTORATE WERE

- C. HEWITT: TO DETERMINE THE ALLEGATIONS WERE CORRECT AND OF SUFFICIENT REASON FOR A RECALL.
- B. ALBERTSON: CLERK ALBERTSON FELT THE "FAILURE TO ATTEND POSTED MEETINGS AND WORK SESSIONS" WAS UNCLEAR AND MISLEADING. IT WAS HER OPINION THIS SHOULD BE SPECIFIED BEFORE PRESENTATION TO THE ELECTORATE.
- J. NEITZEL: TREASURER JEANETTE NEITZEL EVIDENCED HER CONFUSION WITH THE ALLEGATIONS PRESENTED TOWARD MR. SHARP AND WHAT INTREPRETATION THE STATE STATUTE ALLOWED FOR "EXCESSIVE COMPENSATION". FOR WHAT HAD MR. SHARP SUPPOSEDLY RECEIVED COMPENSATION, WAGES OR WORKERS COMPENSATION OR WHAT?
- C. HEWITT: MR. HEWITT STATED HE REFERRED TO SPECIFIC CASELAW ALONG WITH THE ENROLLED HOUSE BILL AND CITING SPECIFIC CASELAW SHOULD NOT BE THE REASON THE PUBLIC MAY NOT BE CLEAR ON THIS ISSUE ACCORDING TO COURTS.
- K. TIGHE: JUDGE TIGHE REMINDED MEMBERS AND GUESTS THAT IT WAS NOT THEIR RESPONSIBILITY TO DETERMINE THE TRUE OR FALSE OF THE ISSUE. THE PURPOSE OF THE CLARITY WAS TO ASSURE THE ELECTORATE AND THE PERSON RECALLED, OF THE SPECIFIC CONDUCT IN WHICH THE RECALL WAS BASED. IT WAS HER OPINION THE PHRASE "FAILURE TO ATTEND" MEETINGS ETC., WAS TOO VAGUE AND NOT SPECIFIC. LANGUAGE SUCH AS "POOR ATTENDANCE RECORD, THE LACK OF ATTENDANCE AT SEVERAL MEETINGS, FAILURE TO ATTEND A MAJORITY OF MEETINGS OR THREE OUT OF TEN MEETINGS" WOULD BE BETTER EXAMPLES OF VERBIAGE.

THE PETITIONS FOR EACH INDIVIDUAL WERE TO BE CONSIDERED SEPARATE BY VOTE.

- #1 JORDAN: JEANETTE NEITZEL STATED THE "LACK OF ATTENDANCE" AND "FAILURE TO ATTEND"

- #1 JORDAN: MEETINGS WAS THE UNCLEAR PORTION OF MR. JORDAN'S RECALL PETITION. KAREN TIGHE HAD AGREED THIS MUST BE MORE SPECIFIC BEFORE PRESENTATION TO THE ELECTORATE. CLERK ALBERTSON MOTIONED TO DENY THIS PETITION AND JEANETTE NEITZEL SUPPORTED IT. THE MOTION TO DENY A RECALL PETITION OF WILLIAM JORDAN WAS APPROVED BY ROLL CALL VOTE OF 3 YEAS, 0 NAYS.
- #2 CAPRATHE: IN THE OPINION OF KAREN TIGHE, LANGUAGE REFLECTING "FAILURE TO ATTEND" MEETINGS WAS ONCE AGAIN, UNCLEAR. THE PETITION ALSO CONTAINED ALLEGATIONS THAT MS. CAPRATHE "HELD OTHER OFFICES/18 MONTHS" AND THIS PORTION WAS CLEAR BUT NOT FOR THE ELECTION COMMISSION TO DETERMINE THE VALIDITY OF. AFTER THE COMMENTS, MS. TIGHE MOVED TO DENY THE PETITION OF LINDA CAPRATHE. IT WAS SUPPORTED BY BARBARA ALBERTSON AND THE MOTION TO DENY IT WAS PASSED BY ROLL CALL VOTE OF 3 YEAS, 0 NAYS.
- #3 SHARP: THIS PETITION ALSO CONTAINED THE VERBIAGE "FAILURE TO ATTEND" AND "RECEIVING EXCESSIVE COMPENSATION". JUDGE TIGHE FELT THE FAILURE TO ATTEND MEETINGS WAS THE PORTION OF THE PETITION WHICH WAS UNCLEAR, THE BALANCE OF THE VERBIAGE WAS ACCEPTABLE. BASED ON THOSE COMMENTS JUDGE TIGHE MOVED TO DENY THE PETITION OF MR. SHARP FOR ITS CLARITY. CLERK ALBERTSON SUPPORTED THE MOTION TO DENY WITH THE CONCURRENCE OF ALL MEMBERS EVIDENCED BY ROLL CALL VOTE OF 3 YEAS, 0 NAYS.
- #4 KOWALSKI: IN THE PETITION OF MR. KOWALSKI THE SAME PHRASE WHICH REFERRED TO THE "FAILURE TO ATTEND" MEETINGS WAS UNACCEPTABLE AS MOTIONED BY JUDGE TIGHE. BARBARA ALBERTSON SUPPORTED THE MOTION TO DENY AS PASSED BY ROLL CALL OF 3 YEAS, 0 NAYS.

THE ELECTION COMMISSION SESSION HELD ON THIS DATE WAS CONCLUDED. JEANETTE NEITZEL MOVED TO ADJOURN AT 8:35 A.M. CLERK ALBERTSON SUPPORTED THE MOTION TO ADJOURN AS CARRIED BY VOICE VOTE OF 3 YEAS, 0 NAYS.

RESPECTFULLY SUBMITTED

BARBARA ALBERTSON
BAY COUNTY CLERK